

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MBODY MINIMALLY INVASIVE SURGERY, P.C.,
NICK GABRIEL, D.O., JODIE BREWER and ERIN
NASTRO,

Plaintiffs,

Civil Act. No.: 14-cv-2495(ER)

-against-

UNITED HEALTHCARE INSURANCE COMPANY,
UNITED HEALTHCARE OF NEW YORK, UNITED
HEALTHCARE SERVICE, LLC, and UNITED
HEALTHCARE SERVICES, INC.,

Defendants.

**DECLARATION OF
MICHAEL H. BERNSTEIN**

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MICHAEL H. BERNSTEIN, pursuant to 28 U.S.C. §1746(2), being duly sworn, deposes and states under penalty of perjury:

1. I am a member of the firm of Sedgwick LLP, attorneys for Defendants in the above action. As such, I am fully familiar with the facts and circumstances in this matter.
2. I submit this Declaration and the exhibit annexed hereto in support of Defendants' motion to dismiss.

PROCEDURAL HISTORY

3. On April 9, 2014, Plaintiffs commenced this action against Defendants. (Doc. No. 1). Plaintiffs alleged in their Complaint that they are out-of-network providers with no direct contractual relationship with Defendants. According to Plaintiffs' initial allegations, they were underpaid for unidentified claims for unidentified participants enrolled in unspecified plans that may or may not be insured by Defendants and that may or may not be governed by the ERISA, which underpayments and denials started on June 16, 2011.
4. Defendants sought leave to file a motion to dismiss. (Doc. No. 63). In response, Plaintiffs advised that they intended to file an amended complaint.

5. On November 10, 2014, Plaintiffs filed their Amended Complaint, identifying the claims at issue. (Doc. No. 21). Plaintiffs' Amended Complaint alleges the following eleven counts against Defendants: (1) claims for benefits under ERISA §502(a)(1)(B); (2) violations of ERISA §503 for failure to provide a full and fair review of claims allegedly subject to an audit performed by Defendants; (3) violations of ERISA §503 for alleged failure to timely respond to issues concerning benefit payments; (4) breaches of fiduciary duty under ERISA §404, 29 U.S.C. §1104; (5) a claim for declaratory relief under ERISA stating that Plaintiffs were entitled to, but not provided with, a full and fair review under 29 U.S.C. §1133 and did not receive requested SPDs from plan administrators under 29 U.S.C. §1022; (6) breach of contract for non-ERISA claims; (7) breach of an implied covenant of good faith; (8) unjust enrichment; (9) violations of New York General Business Law §349; (10) violations of N.Y. Insurance Law §3224-A; and (11) tortious interference with prospective economic advantage. A true and correct copy of the Amended Complaint with Appendices that was filed with the Court is annexed hereto as Exhibit "RR".

6. The Court granted Defendants leave to file this motion by Order dated October 19, 2015 (Doc. No. 36) and the date to file the motion was extended by Order dated December 10, 2015 (Doc. No. 38) to today.

Dated: New York, New York
December 18, 2015

s/ Michael H. Bernstein
MICHAEL H. BERNSTEIN